
STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2013-16

Legistar #: 20130241

Board of Zoning Appeals Hearing: Monday, March 25, 2013 – 6:00 p.m.

Petitioner/Agent: n/a

Property Owner: William Favara
156 Normandy Drive
Marietta, GA 30064

Address: 156 Normandy Drive

Land Lot: 12270 **District:** 16 **Parcel:** 0550

Council Ward: 3 **Existing Zoning:** R-4 (Single Family Residential 4 units/acre)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to request the allowance of the unfinished side of a fence to be to the exterior.
[§710.04(A)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

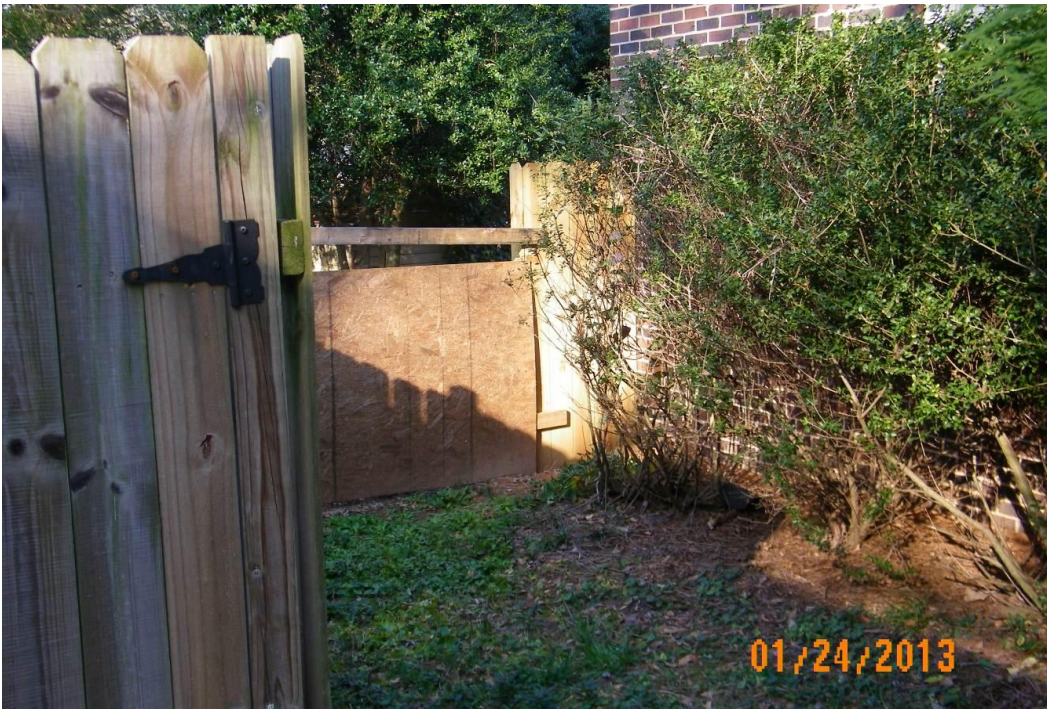
Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES







Recommended Action:

Denial. The applicant, William Favara is requesting a variance to allow the unfinished side of his fence to face the exterior. The subject property is .212 acres and is currently zoned R4 (Single Family Residential 4 units/acre) and is known as 156 Normandy Drive. The subject property is located within a residential neighborhood which is also zoned R4 (Single Family Residential 4 units/acre).

The applicant was cited by Code Enforcement staff for having the unfinished side of his fence facing the exterior, as require by code. As such, Mr. Favara is requesting a variance to keep the unfinished size of the fence to the exterior.

Mr. Favara has explained that there is an existing 4 ft. chain link fence that his adult dog jumps over; and to alleviate this problem, he installed a 6 ft. wooden privacy fence on the interior of the lot and inside the perimeter of the chain link fence. The chain link fence was not removed and remains in place around the new wooden fence. Mr. Favara said that he was unaware of the current code on fencing until the Code Enforcement office requested that he bring his fence into compliance. He was given the option of either completely refacing the exterior of the fence or to create a “shadowbox” fence by placing an exterior plank every other plank along the entire fence. He has stated he is unable to comply with either of these two proposed options because of the financial burden that those options present him a financial burden to comply.

As part of the duties of the Board of Zoning Appeals, the Board is granted the authority to “*Grant variances from zoning regulations of this article in cases where strict application of such regulations would result in unnecessary hardship; but only in harmony with the spirit and intent of these regulations and is the minimum necessary to grant relief without injury to the public interest. All such variances must be based upon the evidence submitted before the Board of Zoning Appeals and upon its findings, supported by the testimony or by documentary testimony that such variance shall be required by one of the following causes:*

- a) *Because of the existence in good faith of a non-conforming use at a time prior to the adoption of the Zoning Ordinance of the City of Marietta, or amendments thereto, requires the continuance of such non-conforming use,*
- b) *There are extraordinary and exceptional conditions creating a substantial hardship to the applicant which pertain to the particular piece of property or building in question because of its size, shape or topography.*

The regulations specifically do not include cost of repairs as an “extraordinary and exceptional condition” for which a variance should be granted. Further, while it is unfortunate that many fence companies appear to be ignoring local regulations when erecting fences, the property owner is ultimately responsible for ensuring that any fence erected on his property is in compliance. ***Staff recommends denial of the requested variance.*** However, should this variance be approved, Staff recommends that Mr. Favara be required to remove the chain link fence.